

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

**Communications Assistance for Law
Enforcement Act**

CC Docket No. 97-213

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REPLY COMMENTS OF MOTOROLA, INC.

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REPLY COMMENTS OF MOTOROLA, INC.

Motorola, Inc. ("Motorola") submits these reply comments pursuant to 47 C.F.R. §§ 1.415 & 1.419, the Commission's Notice of Proposed Rulemaking ("Notice") regarding the Communications Assistance for Law Enforcement Act ("CALEA"),¹ and the notice extending the reply comment due date in this proceeding.²

I. DEFINITION OF "TELECOMMUNICATIONS CARRIER"

The Commission should define the term "telecommunications carrier," as emphasized in Motorola's initial comments, in a manner that provides guidance to industry regarding which telecommunications technologies and services are covered by CALEA and that gives effect to the manifest intent of Congress that the term be construed narrowly.³ These reply comments address issues raised by commenters with

¹ See Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, FCC 97-356 (rel. Oct. 10, 1997) ("Notice").

² 63 Fed. Reg. 1943 (Jan. 13, 1998).

³ See Comments of Motorola, Inc. ("Motorola Comments"), at 1-4.

respect to four types of telecommunications services: (1) services provided by resellers, (2) Specialized Mobile Radio ("SMR") services, (3) paging services, and (4) information services.

A. RESELLERS

While some commenters argue that the services of resellers should be covered by CALEA, the rationale of their comments is consistent with Motorola's position that resellers should be excluded from the definition of "telecommunications carrier."⁴ A significant number of commenters argue that resellers should be covered by CALEA because of the need for resellers to cooperate with law enforcement, including by supplying customer information and billing records.⁵ Motorola agrees that it is

⁴ See Motorola Comments, at 5.

⁵ See Comments of the Ameritech Operating Companies ("Ameritech Comments"), at 2 ("the telecommunications carrier that owns and operates the switch will have to initiate the intercept, but will not have authority or ability to initiate the intercept without the reseller's authorization"); Comments of BellSouth Corporation ("BellSouth Comments"), at 5-6 ("Customer information relevant to the subscriber is under the direction and control of the reselling carrier."); Comments of GTE Service Corporation ("GTE Comments"), at 5 (cooperation of reseller is needed to "verif[y] the data for the target (name, phone number) before initiating the intercept"); Comments of Omnipoint Communications, Inc., at 7 ("resellers maintain the records that reveal dialing information and other 'call-identifying information' in connection with the customers"); Comments of Paging Network, Inc. ("PageNet Comments"), at 6 ("Although [resellers] are not facilities-based and are not in a position to effectuate a network interception, these carriers could possess information, such as subscriber information, that may be necessary in order to comply with a lawful request for interception"); Comments of the Personal Communications Industry Association ("PCIA Comments"), at 6 ("resellers, not the underlying facilities-based carrier, have access to the name, telephone numbers, and addresses of their end-user customers") at 6-8; Comments of SBC Communications, Inc. ("SBC Comments"), at 6 ("each reseller will be . . . in sole possession of information . . . such as customer identifying information and billing information"); Comments of the United States Telephone Association ("USTA
(Continued ...)

important for resellers to be required to cooperate with law enforcement, including for the purposes of supplying information that is uniquely within their possession. However, this does not mean that resellers are "telecommunications carriers" covered by CALEA.

Resellers (as well as other telecommunications service providers) already have obligations under Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("Title III")⁶ to cooperate fully with court-ordered interception of communications, including by providing customer information and billing records.⁷ The Commission should recognize that the obligations of resellers under Title III are sufficient to satisfy the concerns raised by commenters in this proceeding.

As non-facilities-based carriers, resellers cannot be "telecommunications carriers" who are subject to the capability and capacity requirements of CALEA. Several commenters make this point. For example, the Personal Communications Industry Association ("PCIA") states:

Resellers should not . . . be responsible for ensuring that the network of the underlying facilities-based carrier complies with the assistance capability requirements of Section 103 or the capacity requirements of Section 104.⁸

Comments"), at 4 ("Resellers . . . will be in sole possession of information to which the switch provider will not have access.").

⁶ Pub. L. 90-351, 82 Stat. 197 (1968).

⁷ See 18 U.S.C. § 2518(4) (authorizing court order to "direct that a provider of wire or electronic communication service . . . or other person shall furnish . . . forthwith all information, facilities, and technical assistance necessary to accomplish the interception").

⁸ PCIA Comments, at 8.

Similarly, PageNet states that “a carrier that packages or offers services provided over another carrier’s network (e.g., resale), is not in a position to effect an interception on the other carrier’s network.”⁹

More importantly, the Commission is legally barred from concluding that non-facilities-based resellers are “telecommunications carriers” under CALEA. CALEA defines “telecommunications carrier” as “a person or entity **engaged in the transmission or switching of wire or electronic communications**”¹⁰ – activities which non-facilities-based carriers do not conduct.¹¹ It would be directly contrary to this explicit statutory language for the Commission to include non-facilities-based resellers within the definition “telecommunications carrier.”

B. SPECIALIZED MOBILE RADIO SERVICES

The comments support the position of Motorola’s initial comments that Specialized Mobile Radio (“SMR”) service providers are subject to CALEA only to the extent that they (1) provide commercial mobile radio service (“CMRS”), (2) are interconnected to the public-switched telephone network, and (3) “utilize intelligent switching capability and offer seamless handoff of customers.”¹²

⁹ PageNet Comments, at 5.

¹⁰ CALEA § 102(8)(A), 47 U.S.C. § 1001(8)(A) (emphasis added).

¹¹ Motorola recognizes that resellers are subject to CALEA to the extent that they own and operate facilities that are subject to CALEA.

¹² See Motorola Comments, at 6-7.

First, no commenter disagrees with the FCC's conclusion that private mobile radio service ("PMRS") is not subject to CALEA. To provide clarity and certainty to service providers, the Commission should clarify that where PMRS is offered over a system on which CMRS service is also provided, CALEA applies only to the CMRS offering and equipment.

Second, CALEA defines "telecommunications carriers" providing "commercial mobile service" by reference to Section 332(d) of the Communications Act of 1934,¹³ which in turn defines CMRS as "interconnected service."¹⁴ The commenters addressing this issue agree with Motorola's interpretation of these clear statutory provisions.¹⁵

Third, the Commission should in this proceeding take a position consistent with the rule adopted for enhanced 911 services – i.e., that "covered SMRs" are those which "utilize intelligent switching capability and offer seamless handoff of customers."¹⁶ Like Motorola, both the American Mobile Telecommunications Association ("AMTA") and Nextel propose this approach.¹⁷

¹³ See CALEA § 102(8)(B)(i), 47 U.S.C. § 1001(8)(B)(i).

¹⁴ 47 U.S.C. § 332(d)(1).

¹⁵ See Motorola Comments, at 6; Comments of the American Mobile Telecommunications Association, Inc. ("AMTA Comments"), at 2-4; Comments of Nextel Communications, Inc. ("Nextel Comments"), at 4.

¹⁶ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems ("Enhanced 911 Order"), CC Dkt. No. 94-102, at ¶ 6 (rel. Dec. 1, 1997).

¹⁷ See AMTA Comments, at 6-7 (citing Enhanced 911 Order); Nextel Comments, at 5 (same; arguing that CALEA should not cover traditional analog SMRs and digital push-to-talk SMRs); Motorola Comments, at 7; see also Comments of Southern

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C. PAGING

Paging presents a special case under CALEA for several reasons. **First**, the House of Representatives report on CALEA does not enumerate paging in the list of services that Congress intended to cover.¹⁸

Second, paging presents issues that are significantly different from those presented by voice telephony and other telecommunications services that are explicitly covered by CALEA. For example, many paging services are "information services" (e.g., providing features such as news updates, stock quotes, electronic mail or other store and forward services) that are specifically exempted from CALEA coverage. Even if the Commission were to determine that certain of these services are not "information services," they are, at least, the functional equivalent of the CALEA-exempt services provided by Internet providers and, in such instances, the Commission should exercise its discretion under section 102(c) to exempt these services.¹⁹

In addition, significant components of paging communications involve services and networks not under the control of the paging service provider – e.g., calls on the PSTN that are made in order to initiate a transmission to a paging subscriber. In

Communications Services, Inc., at 2-5 (CALEA should not cover dispatch-oriented SMRs).

¹⁸ See H.R. Rep. No. 103-827, at 20 (1994)("House Report").

¹⁹ See CALEA §§ 102(6), 102(8)(C)(i), 47 U.S.C. §§ 1001(6), 1001(8)(C)(i); House Report, at 23.

sum, it is far from clear whether and to what extent paging services are covered by CALEA.

To any extent that CALEA covers paging, Motorola agrees with those commenters who contend that obligations for traditional paging services are satisfied by current practices on cloning of pagers.²⁰ Moreover, law enforcement apparently accepts this position; the FBI has stated in several recent meetings that cloning of pagers satisfies CALEA obligations for traditional paging.²¹

D. INFORMATION SERVICES

Motorola also agrees with the numerous commenters who point out that the explicit language of CALEA indicates that information services are not covered by CALEA, even where provided by common carriers who offer other services that are subject to CALEA.²²

II. EXTENSION OF COMPLIANCE DATE

The comments overwhelmingly support Motorola's position that in light of the delays in CALEA implementation, the Commission should grant a two-year blanket

²⁰ See Comments of AirTouch Communications, Inc., at 17; PCIA Comments, at 8-10.

²¹ See, e.g., FBI Comments to the Personal Communications Industry Association at the PCIA offices in Alexandria, Virginia (Dec. 17, 1997).

²² See, e.g., Ameritech Comments, at 2-3; Comments of AT&T Corp. ("AT&T Comments"), at 39-41; SBC Comments, at 8-9; Comments of U S West, Inc. ("U S West Comments"), at 6-13.

extension of the CALEA compliance date to October 24, 2000.²³ Numerous commenters support exactly such a two-year blanket extension.²⁴ Other commenters support a blanket extension, without specifying a particular time period.²⁵ Moreover, even the FBI recognizes that it may be appropriate to grant an extension of the CALEA compliance date on the basis of "development, manufacturing, and deployment schedules in the industry"²⁶

As an alternative, the Commission should determine that CALEA compliance for particular telecommunications products is not "reasonably achievable" until at least 24 months after the adoption of an unchallenged industry standard or other

²³ See Motorola Comments, at 11. Motorola reserves the right separately to seek an extension on its own behalf and/or to seek additional extensions beyond October 24, 2000.

²⁴ See AMTA Comments, at 8; Comments of Bell Atlantic Mobile, Inc., at 8-9; BellSouth Comments, at 18-19; Comments of the Cellular Telecommunications Industry Association, at 6-8; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, at 6-8; PageNet Comments, at 13-15; Comments of PrimeCo Personal Communications, L.P., at 5-6; Comments of the Rural Telecommunications Group, at 6-7; Comments of the Telecommunications Industry Association, at 9-11; Comments of United States Cellular Corporation, at 2-3.

²⁵ See AT&T Comments, at 27-28; PCIA Comments, at 3-4; USTA Comments, at 13-14; Comments of 360° Communications Company, at 7-8.

²⁶ Comments of the Federal Bureau of Investigation ("FBI Comments"), at 41. See also FBI CALEA Implementation Report, at 15 (Jan. 26, 1998) ("Law enforcement recognizes that for some switches, a CALEA solution may need to be phased in through routine switch software releases and upgrades. The realities of technical solution development and the impact of solution deployment in the network are not lost on law enforcement.").

agreement between the Department of Justice and industry regarding technical compliance for that product.²⁷

III. CARRIER SECURITY POLICIES AND PROCEDURES

Motorola also agrees generally with the numerous commenters who argue for narrowing of the carrier security policies and procedures proposed in the Notice.²⁸ The extremely burdensome additional procedures and personnel policies proposed by the FBI are unwarranted and an unjustified intrusion into the business operations of telecommunications carriers.²⁹

There is no evidence that existing carrier procedures have led to inadequate security for interceptions or ineffective assistance to law enforcement in connection with interceptions. Furthermore, imposition of additional procedures (particularly those proposed by the FBI) would be in conflict with the clear Congressional presumption against new or excessive telecommunications regulation embodied in the Telecommunications Act of 1996.³⁰

²⁷ See AT&T Comments, at 6 ("Without stable technical standards in place to guide manufacturers and carriers, and without adequate time to implement technical solutions, CALEA compliance will never be reasonably achievable.").

²⁸ See, e.g., AT&T Comments, at 28-37; BellSouth Comments, at 7-8, 11-14; GTE Comments, at 6-10; PCIA Comments, at 8-12; SBC Comments, at 17-23; USTA Comments, at 5-8; U S West Comments, at 13-33.

²⁹ See FBI Comments, at 15-36.

³⁰ See Communications Act of 1934, §§ 10, 11, 47 U.S.C. §§ 160, 161 (added by the Telecommunications Act of 1996).

IV. CONCLUSION

Motorola generally supports the Commission's proposals to implement CALEA. However, Motorola asks that the Commission adopt the recommendations suggested in Motorola's initial comments and in these reply comments in order to promote implementation of CALEA in a consistent, predictable and reasonable manner.

February 11, 1998

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I, L. Benjamin Ederington, an attorney in the law office of Steptoe & Johnson LLP, hereby certify that I have on this February 11, 1998, caused to be served by first class mail, a copy of the foregoing Comments to the following:

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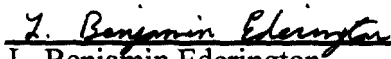
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